

1
2 BILL NO. S-77-08- 41

SPECIAL ORDINANCE NO. S- 193-77

3
4 AN ORDINANCE approving a contract
5 for construction of Getz Road -
6 Colony Bay Road connecting feeder
7 main.

8
9 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY
10 OF FORT WAYNE, INDIANA:

11
12 SECTION 1. That the contract dated August 1, 1977
13 between the City of Fort Wayne, by and through its Mayor and
14 the Board of Public Works, and NOBIS CONSTRUCTION CO., INC.,
15 for:

16 2600± ft. of 12" water main on Getz Road
17 & Colony Bay Road from Maurane Drive to
18 Magnavox Way,

19 for a total cost of \$54,385.00, all as more particularly
20 set forth in said contract which is on file in the Office of
21 the Board of Public Works and is by reference incorporated
22 herein, made a part hereof and is hereby in all things ratified,
23 confirmed and approved.

24 SECTION 2. This Ordinance shall be in full force and
25 effect from and after its passage and approval by the Mayor.

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Councilman

APPROVED AS TO FORM
AND LEGALITY,

Associate
CITY ATTORNEY

Read the first time in full and on motion by O. Schmidt, seconded by

Thurges, and duly adopted, read the second time by title and referred to the Committee on Public Works, (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 8-23-77 Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by O. Schmidt, seconded by Hunter, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	<u>1</u>	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>✓</u>	_____	_____	_____	_____
<u>HUNTER</u>	<u>✓</u>	_____	_____	_____	_____
<u>MOSES</u>	_____	_____	_____	<u>✓</u>	_____
<u>NUCKOLS</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 9-13-77 Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S 193-77 on the 13th day of September, 1977
ATTEST: (SEAL) Charles W. Westerman John Nuckols
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of September, 1977, at the hour of 11:30 o'clock A. M., E.S.T.
Charles W. Westerman
CITY CLERK

Approved and signed by me this 14th day of September, 1977, at the hour of 3:30 o'clock P. M., E.S.T.
Robert Elmhurst
MAYOR

Bill No. S-77-08-41

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on PUBLIC WORKS to whom was referred an Ordinance
approving a contract for construction of Getz Road - Colony Bay Road
connecting feeder main

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance DO PASS.

WINFIELD C. MOSES, JR. - CHAIRMAN

DONALD J. SCHMIDT

VIVIAN G. SCHMIDT

PAUL M. BURNS

SAMUEL TALARICO

William TR
Donald J. Schmidt
Vivian G. Schmidt
Paul M. Burns
Samuel J. Talarico

DATE 9-13-77 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

AGREEMENT

FOR CONSTRUCTION OF GETZ RD: - COLONY BAY RD. CONNECTING FEEDER MAIN

BOARD ORDER NO. 17-77

CONTRACT NO. 77-XP-1

WORK ORDER NO. 63346

THIS AGREEMENT, made into this 15th day of August, 1977, by and between NOBIS CONSTRUCTION CO., INC., herein called the Contractor, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, herein called Owner,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., for excavation, laying and connecting of pipe and fittings, hauling of spoil, backfilling trench to specifications and restoring work area at the following described location:

2600± ft. of 12" water main on Getz Road & Colony Bay Road from Maurane Drive to Magnavox Way.

All according to Fort Wayne Water Utility Drawing Y-10514, sheets 1 thru 7, and do everything required by the contract documents and this Agreement.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay the Contractor for the performance of the contract the unit price sum of \$54,385.00. In event the amount of work is increased or decreased by the Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by the Utility upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety percent (90%) of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by the Utility to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspections. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works who shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted, and the entire balance of the contract sum shall be due and payable to the Contractor.

At the time said payment is due and payable, the Contractor shall furnish the Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid.

ARTICLE 5. GUARANTEE OF WORKMANSHIP

At the time the Completion Affidavit is filed, the Contractor shall furnish a one (1) year Guaranty Bond in favor of the City of Fort Wayne and in the amount of twenty-five (25%) percent of the total value of the final invoice.

ARTICLE 6. THE CONTRACT DOCUMENTS

The Instructions to Bidders, Specifications, Contractor's Proposal, and this Agreement form the Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated. The following is an enumeration of these documents:

- A. Instructions to Bidders for Contract No. 77-XP-1
- B. Contractor's Proposal dated July 12, 1977
- C. Supplemental Specifications for GETZ RD. - COLONY BAY RD. CONNECTING FEEDER MAIN, and Detailed Specifications and Conditions for the installation of Transmission and Distribution Mains, Contract No. 77-XP-1, and Fort Wayne Water Utility, Engineering Department Drawing No. Y-10514, Sheets 1 thru 7.
- D. Water Main Material Standards of the Fort Wayne Water Utility, Engineering Department, dated March 22, 1976, except as modified in the Supplemental Specifications.

ARTICLE 7. ADJUSTMENT OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility of the Owner, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 8. INDEMNITY

Contractor shall indemnify the Owner against any claim or loss incurred or arising out of the performance of the work as provided herein.

ARTICLE 9. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by its Mayor and Board of Public Works, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

NOBIS CONSTRUCTION CO., INC.

BY: William M. Nobis
William M. Nobis, President

CITY OF FORT WAYNE, INDIANA

BY: _____
Robert E. Armstrong, its Mayor

ATTEST:

BOARD OF PUBLIC WORKS:

Ursula Miller, Clerk

Henry P. Wehrenberg, Chairman

APPROVED AS TO FORM & LEGALITY:

Ethel H. LaMar, Member

Max G. Scott, Member

Approved by the Common Council of the City of Fort Wayne on ____ day of _____, 1977.

Special Ordinance No. _____

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND

BALTIMORE, MD. 21203

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That Nobis Construction Company, Inc.

(Here insert the name and address or legal title of the Contractor)

3705 Rupp Drive, Fort Wayne, Indiana

as Principal, hereinafter called Contractor, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Fort Wayne, Indiana

(Here insert the name and address or legal title of the Owner)

as Oblige, hereinafter called Owner,

in the amount of Fifty Four Thousand Three Hundred Eighty Five Dollars and no cents

Dollars (\$ 54,385.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated August 1, 1977, entered into a contract with Owner for Water Main on Getz Road, Contract # 77-XP-I, Fort Wayne, Indiana

in accordance with drawings and specifications prepared by

(Here insert full name, title and address)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this 1st day of August A.D. 1977

In the presence of:

Keith A. Nobis

Nobis Construction Company, Inc. (SEAL)

Principal

William M. Nobis

Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Virginia J. Olson

By Donald L. Coffey (SEAL)
(Attorney-in-fact) Title

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by **C. M. PECOT, JR.**, Vice-President, and **PAUL E. ZACHARSKI**, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

"The President, or any one of the Executive Vice-Presidents, or any one of the additional Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto."

does hereby nominate, constitute and appoint **Walter H. Lupke, Jr., Duane E. Lupke, Donald L. Coffey, Edward B. Rice, Walter E. Boose, Paula W. Schneider, Marvin P. Martin, Lowell K. Zelt and Virginia T. Axson, all of Fort Wayne, Indiana, EACH**.....
its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of **Walter H. Lupke, Jr., et al**, dated November 6, 1975.

The said Assistant Secretary does hereby certify that the foregoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 21st..... day of June....., A.D. 1976.....

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

ATTEST:



Paul E. Zacharski
Assistant Secretary

By *Walter H. Lupke, Jr.*
Vice-President

STATE OF MARYLAND }
CITY OF BALTIMORE } SS:

On this 21st day of June, A.D. 1976, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and swear, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.



Melinda T. Haus

Notary Public Commission Expires July 1, 1979

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which this foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 1st..... day of August....., 1977.....

Walter H. Lupke, Jr.
Assistant Secretary

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT - CONTRACT NO. 77-XP-1 - NOBIS CONSTR. CO.
INC., CONTR.DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKSSYNOPSIS OF ORDINANCE AGREEMENT - CONTRACT NO. 77-XP-1, GETZ ROAD-COLONY BAY ROADCONNECTING WATER FEEDER MAIN, NOBIS CONSTRUCTION CO., INC., CONTRACTOR, IN THE AMOUNT OF
\$54,385.00.(CONTRACT ATTACHED)PRIOR APPROVAL ACQUIRED JULY 21, 1977EFFECT OF PASSAGE INSTALLATION OF WATER FEEDER MAIN FOR ABOVE AREAEFFECT OF NON-PASSAGE INABILITY TO INSTALL WATER FEEDER MAINMONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$54,385.00 FROM WATER UTILITYASSIGNED TO COMMITTEE*Public Works*